

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD OSUNA,

Plaintiff,

- against -

THE CITY OF NEW YORK;
THE NEW YORK CITY POLICE DEPARTMENT,
NEW YORK CITY POLICE OFFICER
CHRISTOPHER JACOBELIS, 13th Precinct,
NEW YORK CITY POLICE OFFICER
HOLIHAN, 13th Precinct,
THE BELMONT LOUNGE;
SERGIO ALARCON, as employee of Defendant
BELMONT LOUNGE,
SERGIO ALARCON, individually,

Defendants.

**ANSWER TO CO-
DEFENDANT BELMONT
LOUNGE'S CROSS-CLAIMS
ON BEHALF OF
DEFENDANTS CITY OF
NEW YORK, NYPD,
JACOBELLIS AND
HOLOHAN**

Jury Trial Demanded

08 CV 4759 (JSR)

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Defendants City of New York, the New York City Police Department ("NYPD"), Christopher Jacobellis¹ and William Holohan,² by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the answer with cross-claims of co-defendant Belmont Lounge, respectfully allege, upon information and belief, as follows:

1. Defendants repeat and reallege each and every paragraph of their answer to the complaint, dated July 22, 2008, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Deny the allegations set forth in paragraph "50" of the answer of co-defendant Belmont Lounge.

¹ Sued herein as "New York City Police Officer Christopher Jacobelis".

² Sued herein as "New York City Police Officer Holihan".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

3. The cross-claims of co-defendant Belmont Lounge fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

4. The cross-claims of co-defendant Belmont Lounge may be barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

5. Co-defendant's cross claims against defendant City of New York are not ripe for adjudication.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

6. The defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

7. Any injury alleged to have been sustained resulted from plaintiff's and/or co-defendant's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendants City of New York, NYPD, Jacobellis and Holohan.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

8. Punitive damages are not available as against the defendant City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

9. Defendants Jacobellis and Holohan have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

10. The NYPD is not a suable entity pursuant to §396 of the New York City Charter, and accordingly all claims against it are barred.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

11. At all times relevant to the acts alleged in the complaint, defendant City of New York, its agents and officials acted reasonably and properly in the lawful exercise of their discretion. Therefore, they are entitled to governmental immunity from liability.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

12. Co-defendant Belmont Lounge has failed to comply with N.Y. General Municipal Law §50-e.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

13. Whatever injuries and damages that plaintiff has sustained as alleged in the complaint were attributable, in whole or in part, to co-defendants.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

14. There was probable cause for plaintiff's arrest, detention and prosecution.

WHEREFORE, defendants request judgment dismissing the cross-claims in their entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 28, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for defendants City of New York, NYPD,
Jacobellis and Holohan
100 Church Street,
New York, New York 10007
(212) 788-1177

By: /s/
Benjamin E. Stockman
Assistant Corporation Counsel
Special Federal Litigation Division

To: J. Roberto Cardenas, Esq.,
Attorney for defendants Belmont Lounge and Alarcon
119 West 57th Street, Suite 1215
New York, NY 10019 (via E.C.F. and first class mail)

Victor Brown, Esq.,
Attorney for plaintiff
11 Park Place
Suite 600
New York, NY 10007 (via E.C.F. and first class mail)

DECLARATION OF SERVICE BY MAIL

I, BENJAMIN E. STOCKMAN, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that on August 28, 2008, I served the annexed ANSWER upon the following counsel of record by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said counsel of record at the address set forth below, being the address designated by plaintiff for that purpose:

J. Roberto Cardenas, Esq.,
Attorney for defendants Belmont Lounge and Alarcon
119 West 57th Street, Suite 1215
New York, NY 10019

Victor Brown, Esq.,
Attorney for plaintiff
11 Park Place
Suite 600
New York, NY 10007

Dated: New York, New York
August 28, 2008

/s/

BENJAMIN E. STOCKMAN
ASSISTANT CORPORATION COUNSEL

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Defendants.

**ANSWER TO CO-DEFENDANT BELMONT
LOUNGE'S CROSS-CLAIMS**

MICHAEL A. CARDOZO

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NYPD, Jacobellis and Holohan
100 Church Street
New York, New York 10007*

*Of Counsel: Benjamin E. Stockman
Tel: (212) 788-1177
NYCLIS No.*

Due and timely service is hereby admitted.

New York, N.Y., 200...

..... Esq.

Attorney for.....